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U.S.D.C. - Atlanta

JUN 29 2010

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. JAK PRODUCTIONS, INC., an Indiana corporation, also d/b/a AREA SERVICES, and JOHN KELLER, individually and as an officer of JAK PRODUCTIONS, INC., Defendants.	Case No. 1 10 · CV - 2008 **COMPLAINT FOR CIVIL PENALTIES, PERMANENT INJUNCTION, AND OTHER EQUITABLE RELIEF**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or "Commission"), pursuant to Section 16(a)(1) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 56(a)(1), for its Complaint alleges:

1. Plaintiff brings this action under Sections 5(a), 5(m)(1)(A), 13(b), and 16(a) of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and 56(a), and Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act

(the "Telemarketing Act"), 15 U.S.C. § 6105, to obtain monetary civil penalties, a permanent injunction, and other equitable relief from Defendants for their violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Telemarketing Sales Rule (the "TSR" or the "Rule"), 16 C.F.R. Part 310, as amended.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), and 56(a). This action arises under 15 U.S.C. § 45(a).

3. Venue in the Northern District of Georgia, Atlanta Division, is proper under 28 U.S.C. § § 1391(b) - (c), and 1395(a), and 15 U.S.C. § 53(b).

DEFENDANTS

4. Defendant JAK Productions, Inc. ("JAK"), also doing business as Area Services, is an Indiana for-profit corporation with its principal place of business located at 4501 Circle 75 Parkway SE, Atlanta, Georgia, 30339. JAK is a telemarketer that initiates outbound telephone calls to consumers to induce them to make charitable contributions to its not-for-profit clients. JAK transacts or has transacted business in this District.

5. Defendant John Keller is the president of JAK. In connection with the matters alleged herein, he resides or has transacted business in this District. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of JAK, including the acts and practices set forth in this Complaint.

COMMERCE

6. At all times relevant to this Complaint, Defendants have maintained a substantial course of conduct in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

THE TELEMARKETING SALES RULE

7. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101, *et seq.*, in 1994. The FTC adopted the original Telemarketing Sales Rule in 1995, extensively amended it in 2003, and amended certain provisions thereafter. 16 C.F.R. Part 310 ("TSR").

8. Under the TSR, an "outbound telephone call" means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution. 16 C.F.R. § 310.2(u).

9. Since March 31, 2003, the TSR has prohibited sellers and telemarketers from initiating an outbound telephone call to any consumer when that consumer previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the charitable organization for which a charitable contribution is being solicited. 16 C.F.R. § 310.4(b)(1)(iii)(A).

10. Since October 1, 2003, the TSR has prohibited sellers and telemarketers from "abandoning" any outbound telephone call by not connecting the call to a sales representative within two (2) seconds of the person's completed greeting. 16 C.F.R. § 310.4(b)(1)(iv).

11. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

DEFENDANTS' BUSINESS ACTIVITIES

12. Defendants are "telemarketers" engaged in "telemarketing," as defined by the TSR, 16 C.F.R. § 310.2.

13. Since at least 1981, JAK has operated as a for-profit, professional telemarketer that initiates telephone calls to potential donors to induce charitable

contributions. JAK makes and has made telephone calls on behalf of a number of not-for-profit police, firefighter and other organizations (hereinafter, "charity" or "charities") located throughout the United States.

14. Defendants have engaged in telemarketing by a plan, program, or campaign conducted to induce a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. Specifically, JAK is hired by charities to call consumers and ask for contributions on their behalf. From its call centers located in West Virginia, JAK has placed millions of calls to consumers throughout the United States on behalf of these charities. These charities pay JAK for its telemarketing services.

15. Since October 17, 2003, Defendants have made more than two million outbound telemarketing calls in which Defendants failed to connect the call to a sales representative within two (2) seconds of the call recipient's completed greeting.

16. On or after March 31, 2003, Defendants have made thousands of outbound telephone calls to consumers who have previously stated that they do not wish to receive calls made by or on behalf of the charitable organization for which Defendants were soliciting a charitable contribution.

VIOLATIONS OF THE TELEMARKETING SALES RULE

Count I (Abandoning Calls)

17. In numerous instances, in connection with telemarketing to induce charitable contributions, Defendants have abandoned, or caused others to abandon, an outbound telephone call by failing to connect the call to a sales representative within two (2) seconds of the completed greeting of the person answering the call, in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iv).

Count II (Ignoring Entity-Specific Do Not Call Requests)

18. In numerous instances, in connection with telemarketing to induce charitable contributions, Defendants engaged in or caused others to engage in initiating an outbound telephone call to a person who has previously stated that he or she does not wish to receive such a call made by or on behalf of the charitable organization for which a charitable contribution was solicited, in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(A).

CONSUMER INJURY

19. Consumers in the United States have suffered and will suffer injury as a result of Defendants' violations of the TSR. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers and harm the public

interest.

THIS COURT'S POWER TO GRANT RELIEF

20. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief to prevent and remedy any violation of any provision of law enforced by the FTC.

21. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, and as implemented by 16 C.F.R. § 1.98(d), 74 Fed. Reg. 857 (2009), authorizes this Court to award monetary civil penalties of not more than $16,000 for each violation of the TSR. Defendants' violations of the TSR were committed with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

22. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by Defendants' violations of the TSR and the FTC Act.

PRAYER FOR RELIEF

Wherefore, Plaintiff requests that this Court, as authorized by Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and pursuant to its own equitable powers:

(A) Enter judgment in favor of Plaintiff for each violation alleged in this Complaint;

(B) Award Plaintiff monetary civil penalties from each Defendant for every violation of the TSR;

(C) Enter a permanent injunction to prevent future violations of the TSR, and the FTC Act, by Defendants;

(D) Order Defendants to pay the costs of this action; and

(E) Award Plaintiff such other and additional relief as the Court may determine to be just and proper.

Dated: 6/29/2010

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA

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